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November 5, 2024

## VIA ECF

Hon. Lewis J. Liman  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *Freeman et al. v. Giuliani*, No. 24-mc-353 (LJL)

Dear Judge Liman,

Plaintiffs Ruby Freeman and Wandrea' Moss ("Plaintiffs") respectfully submit this letter in response to Defendant's letter dated November 1, 2024, raising for the first time in this proceeding an "alternative" claim for a homestead exemption pursuant to CPLR § 5206 as to the apartment located at 45 E. 66th Street, Apt. 10W, New York, NY 10065 (the "New York Apartment"). ECF No. 78.

Mr. Giuliani's alternative homestead claim is untimely. But even if it had been raised with reasonable diligence, Mr. Giuliani has not demonstrated an entitlement to a homestead exemption pursuant to CPLR § 5206, and indeed, has not even attempted to establish that the factual predicates for such a claim exist.

Notably, despite Mr. Giuliani's apparent assumptions to the contrary, Mr. Giuliani's "alternative" New York homestead claim and his Florida homestead claim are not two sides of the same coin: one is not automatically triggered if the other fails. Instead, to establish the factual predicates for a homestead claim as to each apartment, Mr. Giuliani must address different facts and a different relevant time period, and it is possible that *both* efforts will fail. In the parallel declaratory judgment action, either the undisputed facts or the trial record will demonstrate that Mr. Giuliani did not establish a homestead at the Palm Beach Condo prior to the undisputed date of Plaintiffs' lien on August 8, 2024. Meanwhile, in this proceeding, to the extent Mr. Giuliani's waiver will be forgiven and he will be given another chance to carry his burden to demonstrate an entitlement to the New York exemption, the revelation that Mr. Giuliani recently vacated the New York Apartment sometime in late September or early suggests that he may be disqualified from claiming the New York homestead exemption under CPLR § 5206(c). Stated differently, while an individual cannot simultaneously maintain two homesteads, in this situation, it is possible and even likely that Mr. Giuliani both did not have a homestead claim at the Palm Beach Condo before August 8, 2024, and did not have a homestead claim at the New York Apartment when he sought to claim it here—and that consequently, both of Mr. Giuliani's homestead claims will fail.

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## **I. Background**<sup>1</sup>

On August 30, 2024, Plaintiffs filed a motion for an order requiring Mr. Giuliani to turn over certain property to Plaintiffs, and placing such property into a receivership pursuant to CPLR § 5228—including Mr. Giuliani’s interest in the New York Apartment. ECF No. 8. An opposition to that motion was due September 23, 2024, ECF No. 17, and after Mr. Giuliani did not file anything by that deadline the Court ultimately granted an extension to October 8, 2024, ECF No. 31. Mr. Giuliani filed his opposition on that date. ECF No. 44. In that opposition, Mr. Giuliani specifically “consent[ed] to the appointment of a receiver to effect the sale of the New York apartment.” *Id.* at 5. Only with respect to a separate category of “Other personal property” did Mr. Giuliani “assert[] all defenses available under CPLR § 5205.” *Id.* at 7. On October 22, the Court granted Plaintiffs’ motion and entered an order directing Mr. Giuliani to turn over certain property, including the shares evincing his interest in the New York Apartment, to Plaintiffs as receivers (“Turnover and Receivership Order”). ECF No. 62. As detailed in Plaintiffs’ status report dated November 4, those efforts are ongoing. ECF No. 81. During a visit to the New York Apartment on October 31, Plaintiffs learned that Defendant or his representatives had moved most of the contents out of the apartment, and were informed by a representative of the management company that this had occurred approximately four weeks prior. *Id.*

At a conference held on October 28, 2024, the Court raised the issue of the homestead exemption as to the New York Apartment. ECF No. 67. At the Court’s invitation, Mr. Giuliani filed a letter on November 1 asserting an “alternative” homestead claim with respect to the New York Apartment. ECF No. 78.

## **II. Argument**

Mr. Giuliani’s last minute claim that an exemption applies to the New York Apartment fails both because he has waived his claim and because he has not carried his burden to satisfy the applicable standard.

*First*, Mr. Giuliani has waived his right to claim a homestead exemption as to the New York Apartment because he declined to make such a claim for well over a month despite repeated opportunities to do so. Where, as here, “the exempt status of the property is unclear,” the judgment debtor “bears the burden of claiming and proving the applicability of an exemption.” *Balanoff v. Niosi*, 791 N.Y.S.2d 553, 555 (App. Div. 2d Dep’t 2005) (collecting cases). A debtor who does not timely raise a claim of exemption may be deemed to have waived it. 2 Weinstein, Korn & Miller CPLR Manual § 27.04(*l*) (2024). Here, Defendant could have made (but did not make) this claim in his opposition to Plaintiffs’ motion to enforce their judgment, or at some later time prior to entry of the Turnover and Receivership Order. Indeed, Mr. Giuliani clearly understood that his opposition to the motion to enforce the judgment—which expressly sought turnover of his interest in the New York Apartment—was the appropriate time to assert a § 5205 exemption as to personal property subject to the motion: Mr. Giuliani *did* assert (meritless) exemptions with respect to “Other personal property,” but did *not* make any § 5206 claims with respect to the New York Apartment. ECF No. 44, at 7; *see id.* at 5. Plaintiffs addressed Mr.

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<sup>1</sup> The relevant procedural history and factual background of Plaintiffs’ litigation against Mr. Giuliani and jury award is laid out in Plaintiffs’ August 30, 2024 motion to enforce their judgment. ECF No. 9. Here, Plaintiffs recite only the facts relevant to this letter.

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Giuliani's section 5205 claims in their reply, (ECF No. 59), and the Court considered and rejected those exemption claims in its opinion, ECF No. 62. That was Mr. Giuliani's opportunity to raise and litigate his homestead claim with respect to the New York Apartment, even in the alternative, but his knowing omission waived it.

*Second*, even if the claim were timely, Mr. Giuliani has not even attempted to make the showing necessary to establish his entitlement to an exemption under § 5206(a). That exemption applies to a co-op apartment "owned and occupied as a principal residence." C.P.L.R. § 5206(a). Where, as here, it is unclear whether those requirements are met, the judgment debtor bears the burden to demonstrate that they are. *Balanoff*, 791 N.Y.S.2d at 555. That would require Mr. Giuliani to demonstrate he both maintains actual physical occupancy in the New York Apartment on a more regular basis than any other residence, and also possesses an intent to reside there permanently; Mr. Giuliani has not supported either contention. *See, e.g., Fido's Fences, Inc. v. Bordonaro*, No. 15-CV-3025 (JMA), 2015 WL 7738020, at \*3 (E.D.N.Y. Nov. 30, 2015).

Further, and notable here, Section 5206(c) provides that the New York homestead exemption "ceases if the property ceases to be occupied as a residence," except in circumstances involving destruction of the property not relevant here. C.P.L.R. 5206(c). The recent revelation that Mr. Giuliani has moved most of his property out of the New York Apartment at a minimum raises significant questions about whether Mr. Giuliani would still be entitled to an exemption in light of CPLR § 5206(c). These are factual questions requiring discovery and a hearing on the merits, not a mere assertion of the exemption. *See e.g., IME Watchdog, Inc. v. Gelardi*, No. 22-CV-1032-PKC, 2024 WL 866136, at \*5 (E.D.N.Y. Feb. 29, 2024) (declining to find homestead exemption where the evidence showed that the debtor relocated to another state); *In re DeMarco*, 661 B.R. 191, 198 (Bankr. E.D.N.Y. 2024) (declining to credit testimony of debtor and debtor's girlfriend regarding intent of permanent residence where the record was "devoid of any objective facts or evidence which corroborate [the] subjective statements").

Importantly, this is a separate question from the Florida homestead claim at issue in No. 24-cv-6563. For these reasons, Mr. Giuliani is wrong to imply that his claim of homestead in New York would necessarily succeed if the Court were to rule in favor of Plaintiffs in the parallel declaratory judgment action relating to the Palm Beach Condo. Mr. Giuliani's having disqualified himself from the New York exemption by ceasing to occupy the New York Apartment as a residence is fully consistent with the undisputed facts entitling Plaintiffs to summary judgment on Mr. Giuliani's *Florida* homestead claim, which turn on (undisputed) events compelling the conclusion that Mr. Giuliani had not established a homestead at the Palm Beach Condo prior to August 8, 2024. The two issues are not mirror-images of one another, and in fact, it is possible that—thanks either to Mr. Giuliani's waiver or his gamesmanship—both exemption claims will fail.

Respectfully submitted,

s/ Aaron E. Nathan